

# MUKASEY

## FRENCHMAN

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April 27, 2021

**VIA ECF**

Honorable John G. Koeltl  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

**Re: *Grant et al. v. Trump et al.*, Case No. 1:20-cv-07103-JGK**

Dear Judge Koeltl:

We represent Defendants Donald J. Trump and Donald J. Trump For President, Inc. (together, "Defendants") in the above-referenced action. The Court previously granted Defendants' request for the supplemental briefing on the pending motion to dismiss the complaint (Dkt. No. 18), in order to address the Second Circuit's decision in *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, No. 19-2420-CV, 2021 WL 1148826 (2d Cir. Mar. 26, 2021) ("Andy Warhol II").

We write regarding the upcoming dates fixed in the scheduling order, dated April 2, 2021 (Dkt. No. 31):

- Defendants' Supplemental Brief in support of the Motion to Dismiss the Complaint – May 3, 2021;
- Plaintiffs' Response to Defendants' Supplemental Brief – June 1, 2021; and
- Defendants' Reply – June 15, 2021.

On April 23, 2021, the plaintiff in *Andy Warhol II* ("AWL") filed in the Second Circuit a petition for panel rehearing and rehearing en banc. AWL's petition is based, in part, on the recent Supreme Court decision, issued on April 5, 2021, regarding fair use under the Copyright Act. See *Google LLC v. Oracle Am., Inc.*, 141 S. Ct. 1183 (2021).

In light of the pending rehearing petition in *Andy Warhol II*, we respectfully request that the Court hold the deadlines for the supplemental briefing in abeyance until the Second Circuit takes action on the petition. Plaintiffs oppose Defendants' request.

*The supplemental briefing is stayed pending a decision by the Court of Appeals on whether to grant rehearing en banc. The parties should advise the Court no later than June 4, 2021.*

*with respect to their positions on the supplemental briefing in this case. So ordered.*

*J. G. Koeltl  
U.S.D.J.  
4/30/21.*

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We thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Kenneth A. Caruso  
Kenneth A. Caruso

cc: All Counsel via ECF